

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97-110-3]

RIN 0579-AA92

Importation of Grapefruit, Lemons, and Oranges From Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; change in date and location of public hearing.

SUMMARY: We are advising the public that we have changed the date and location of the public hearing that we will hold to give interested persons an opportunity for the oral presentation of data, views, and arguments regarding our proposed rule regarding the importation of grapefruit, lemons, and oranges from Argentina.

DATES: Consideration will be given only to comments on Docket No. 97-110-1 that are received on or before February 11, 1999. We will also consider comments made at a public hearing that will be held in Thousand Oaks, CA, on February 8, 1999, from 9 a.m. to 5 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-110-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-110-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held at the Thousand Oaks Civic Arts Plaza, Fred Kavli Theatre, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799; e-mail:

Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1998, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (63 FR 43117-43125, Docket No. 97-110-1) to amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. In that document, we also proposed to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

On October 16, 1998, we published in the **Federal Register** (63 FR 55559, Docket No. 97-110-2) a notice advising the public that we were extending the comment period for the proposed rule by 120 days and that we had scheduled a public hearing to give interested persons the opportunity for the oral presentation of data, views, and arguments regarding the proposed rule.

In our October 16, 1998, notice, we announced that the public hearing would be held on December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA. However, we have been asked to reschedule the public hearing to a later date to give interested persons more time to review the proposed rule and its supporting information prior to the hearing. We have also been informed that the number of attendees at the public hearing may exceed the capacity of the Scherr Forum Theatre.

Therefore, the public hearing that had been scheduled for December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA, has been canceled. The public hearing is now scheduled for February

8, 1999, at the Fred Kavli Theatre in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA.

The purpose of this hearing is to give interested persons an opportunity for the oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations.

However, neither the presiding officer nor any other representative of APHIS will respond to the comments at the hearing, except to clarify or explain provisions of the proposed rule.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at a public hearing will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the hearing.

The public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-32228 Filed 12-3-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 98-063-1]

Noxious Weeds; Update of Weed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weeds regulations by

adding *Solanum tampicense* Dunal (wetland nightshade) and *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds and removing *Ipomoea triloba* Linnaeus from the list of terrestrial weeds. We are also proposing to update the taxonomic names of two other weeds currently listed and make one editorial change to the regulations. These actions appear to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, to remove unnecessary restrictions, and to make the regulations easier to understand.

DATES: Consideration will be given only to comments received on or before February 2, 1999. We will also consider comments made at a public hearing to be held on January 6, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-063-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-063-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. The public hearing will be held at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD. Picture identification is required. Parking is available next to the building for a \$2.00 fee (have quarters or \$1 bills). The nearest Metro Station is the College Park station on the Green Line, and is within walking distance.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236, (301) 734-8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7

U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS's) regulations implementing the provisions of Title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weeds whose seeds have no tolerances applicable to their introduction into the United States.

In this document we are proposing to amend the noxious weed regulations by adding two weeds to the list of aquatic weeds in § 360.200(a), removing another weed from the list of terrestrial weeds in § 360.200(c), and updating the taxonomy of two other currently listed weeds. Also, since the FSA regulations in § 361.6(a) support the noxious weed regulations by prohibiting or restricting the importation of the seeds of noxious weeds listed in § 360.200, we are proposing to amend the noxious weed seed list in § 361.6(a) accordingly.

Addition of *Solanum tampicense*

The FNWA defines a noxious weed as "any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

Solanum tampicense Dunal (wetland nightshade) is currently found in five counties in southwestern Florida. Representatives of the Florida Division of Plant Industry and the Florida Department of Environmental Protection participated with APHIS in the New Pest Advisory Group meeting for this species, and concluded that the species meets the FNWA's definition of a noxious weed.

S. tampicense will grow as a perennial only in areas free of frost. Therefore, Florida, and other areas that are generally free from frost, are at risk for the establishment of the *S. tampicense*. The establishment of *S. tampicense* in Florida could have both economic and ecological consequences.

Its prickly growth could inhibit access by livestock to wetlands areas, a potentially serious dry-season problem. It also has the potential to invade natural ecosystems and alter current plant and animal habitats.

Listing this weed would help avert further introductions and help prevent the artificial spread of the weed into noninfested areas of the United States. Therefore, we are proposing to add *S. tampicense* to the list of aquatic weeds in § 360.200(a) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Addition of *Caulerpa taxifolia* (Mediterranean clone)

The Mediterranean clone of the green seaweed *Caulerpa taxifolia* has invaded the Mediterranean coasts of France and Italy and now covers thousands of acres of the coastal zone. This invasive, aquarium-bred clone appears to have been introduced into the Mediterranean Sea from the Monaco Aquarium in 1984. It covered approximately 1 square yard in 1984, spread to over 2 acres by 1989, and now covers over 10,000 acres, extending from the shore to depths of over 250 feet. *C. taxifolia* (Mediterranean clone) grows on both rocky and sandy bottoms, from protected bays to exposed capes, and attains great densities, forming monocultural stands whose impact has been compared to unrolling a carpet across the bottom of the sea. In the regions where it is established, *C. taxifolia* (Mediterranean clone) has caused ecological devastation by overgrowing and eliminating native seaweeds, sea grasses, and invertebrates (such as corals, sea fans, and sponges) and has caused economic damage by harming tourism and recreational diving and creating a costly impediment to commercial fishing. No effective eradication strategies have been identified for *C. taxifolia* (Mediterranean clone).

France, Spain, and Australia have already banned the possession, transport, and sale of *C. taxifolia* (Mediterranean clone), but it continues to be available for importation and sale in the United States for use in public and private aquariums. We believe that *C. taxifolia* (Mediterranean clone), if released into the environment, presents a risk of becoming established in the United States, thus threatening coastal waters and coral reefs from North Carolina to Florida, the Gulf of Mexico, southern California, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

Listing *C. taxifolia* (Mediterranean clone) as a Federal noxious weed would

help prevent its introduction and spread into the natural environment of the United States. Therefore, we are proposing to add *C. taxifolia* (Mediterranean clone) to the list of aquatic weeds in § 360.200(a) and to the list in § 361.6(a)(1).

Removal of *Ipomoea triloba*

The regulations also list *Ipomoea triloba* Linnaeus (little bell, aiea morning glory) as a terrestrial noxious weed. The FNWA's definition of "noxious weed" requires, in part, that such weeds be "of foreign origin." *I. triloba*, however, according to an authority on the family Convolvulaceae, is a species native to Florida, and therefore is not within the scope of the FNWA. We concur with that expert's determination and are, therefore, proposing to remove *I. triloba* from the list of terrestrial weeds in § 360.200(c) and from the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Miscellaneous

We are also proposing to update the taxonomy of *Rottboellia exaltata* Linnaeus S. and *Borreria alata* (Aublet) de Candolle in the terrestrial noxious weed list in § 360.200(c) and the noxious weed seeds list in § 361.6(a)(1). The revised taxonomical names are *Rottboellia cochinchinensis* (Lour.) W. Clayton and *Spermacoce alata* (Aublet) de Candolle, respectively. We are proposing this action because the revised taxonomic names are the names currently recognized by the scientific community and the USDA Germplasm Resources Information Network.

The noxious weeds listed in § 360.200(a) fall under the heading "Aquatic weeds." It has come to our attention that some weeds on that list could be more appropriately described as "wetland weeds." We agree with that suggestion and are, therefore, proposing to rename the heading of that list "Aquatic and wetland weeds" so that it more accurately represents the list's contents.

Public Hearing

APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. The hearing will be held on January 6, 1999, at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be

asked to sign in, listing their names and organizations.

The public hearing will begin at 10:00 a.m. local time and is scheduled to end at 12:00 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

Addition of *S. tampicense* and *C. taxifolia* (Mediterranean clone)

This proposed rule would add *Solanum tampicense* (wetland nightshade) to the list of Federal noxious weeds. *S. tampicense* will grow as a perennial only in areas free of frost, and is therefore a threat to southern Florida and areas of the country with a climate similar to that of southern Florida. *S. tampicense* is currently established in five counties in

southwestern Florida and could potentially have economic consequences for livestock producers in those areas. Its prickly growth may inhibit access by livestock to wetland areas, a potentially serious dry-season problem.

The majority of cattle operations in the counties harboring existing populations of *S. tampicense* are small entities. The extent to which they would be adversely affected by the continued spread of *S. tampicense* is not known. Preventing further introductions and curtailing spread would have a positive economic impact on livestock producers not yet affected.

The unchecked spread of *S. tampicense* may also have a negative impact on natural ecosystems. Although the extent to which *S. tampicense* could displace other natural species is not known, due to the proximity of Everglades National Park to the currently affected areas, the weed could potentially have harmful effects on natural vegetation and wildlife. In responding to the potential harm caused by *S. tampicense* to natural ecosystems, one or more small organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to spread. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to ensure that the costs would be minimal or nonexistent.

This proposed rule would also add *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic noxious weeds. We believe that some importers may currently be importing *C. taxifolia* (Mediterranean clone) into the United States for use in public and private aquariums, but data on the amount of *C. taxifolia* (Mediterranean clone) if any, currently being imported into the United States is unavailable.

The unchecked spread of *C. taxifolia* (Mediterranean clone) into the United States can, however, be expected to have a negative impact on natural ecosystems, given its significant negative effects on the regions in the Mediterranean where it is already established. In responding to the potential harm caused by *C. taxifolia* (Mediterranean clone) to natural ecosystems, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to prevent the need for such expenditures.

We therefore believe that adding *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds would help preclude potential economic and ecological consequences that could result from their spread.

Removal of *Ipomoea triloba*

We are proposing to remove *Ipomoea triloba* (little bell, aiea morning glory) from the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such. The delisting of *I. triloba* could have a slightly positive economic impact on importers of agricultural and vegetable seed, whose shipments would no longer be delayed or refused at the port of entry due to contamination with *I. triloba*.

Alternatives Considered

The only significant alternative to this proposed rule would be to make no changes in the regulations, i.e., to not add *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds and to retain *I. triloba* on that list. We have rejected the alternative of not listing *S. tampicense* and *C. taxifolia* (Mediterranean clone) as Federal noxious weeds because of the potential economic and ecological consequences that we believe would result from their spread. We have also rejected the alternative of retaining *I. triloba* on the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. Section § 360.200 would be amended as follows:

a. In paragraph (a), the paragraph heading would be revised to read "Aquatic and wetland weeds."

b. In paragraph (a), the list of noxious weeds would be amended by adding, in alphabetical order, entries for "*Caulerpa taxifolia* (Mediterranean clone)" and "*Solanum tampicense* Dunal (wetland nightshade)".

c. In paragraph (c), the list of noxious weeds would be amended by removing the entries for "*Borreria alata* (Aublet) de Candolle", "*Ipomoea triloba* Linnaeus (little bell, aiea morning glory)", and "*Rottboellia exaltata* Linnaeus f. (itchgrass, raoulgrass)", and by adding, in alphabetical order, entries for "*Rottboellia cochinchinensis* (Lour.) W. Clayton" and "*Spermacoce alata* (Aublet) de Candolle".

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 would continue to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1), the list of noxious weeds would be amended as follows:

a. The entries for "*Borreria alata* (Aublet) de Candolle" and "*Ipomoea triloba* L." would be removed.

b. The entry for "*Rottboellia cochinchinensis* Clayon (= *R. exaltata* (L.) L. f.)" would be amended by removing the words "Clayon (= *R. exaltata* (L.) L. f.)" and adding the words "W. Clayton" in their place.

c. New entries for "*Caulerpa taxifolia* (Mediterranean clone)", "*Solanum tampicense* Dunal (wetland nightshade)", and "*Spermacoce alata* (Aublet) de Candolle" would be added in alphabetical order.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32229 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–44]

Proposed Modification of the Legal Description of Class D Airspace and Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the legal description of the Class D airspace and Class E airspace at Binghamton Regional/Edwin A. Link field Airport (BGM), Binghamton, NY. The air traffic control tower at BGM has reduced their operating hours. Therefore, the Class D airspace and Class E airspace area designated as an extension to a Class D surface area will be effective only during specific dates and times. This action proposes to designate the airspace as part time and does not propose to change the actual dimensions of the airspace. Adoption of this proposal would result in the affected areas reverting to Class E airspace for the airspace extending upward from 700 feet above the surface during the specified hours of reduced operation.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–44, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.